

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

C.A. No. 05-10490 NMG

NANCY BUCKLEY,  
Plaintiff

v.

CITY OF BROCKTON  
SCHOOL DEPARTMENT,  
Defendant

**DEFENDANT'S OPPOSITION TO PLAINTIFF'S RULE 37  
MOTION TO COMPEL THE PRODUCTION OF DOCUMENTS  
AND FOR SANCTIONS**

The Defendant, City of Brockton, opposes "Plaintiff's Rule 37 Motion to Compel ... ." As grounds, the defendant states the following:

First, in automatic disclosure, the defendant has produced its file for the Advisory Committee (six of seven of whom were women) which ranked Sharon Wolder and Alan Jolly as the number 1 and 2 candidates for the two Housemaster positions at Brockton High School. Nancy Buckley was ranked as the 3<sup>rd</sup> candidate. One member stated that she would not recommend Nancy Buckley.

Contrary to the plaintiff's assertions, it is the defendant's position that Susan Szachowicz, Principal of Brockton High School, on her own ranked Sharon Wolder and Alan Jolly as the number 1 and 2 candidates for the Housemaster positions for which they were promoted.

Second, Sharon Wolder and Alan Jolly declined through their union representative and by correspondence to allow defendant's counsel to release their individual personnel files to plaintiff's counsel.

Similarly, Susan Szachowicz, the Principal of Brockton High School, declined to allow defendant's counsel to produce her personnel file. Joseph Bage, the former Superintendent of Schools of the City of Brockton, declined to allow defendant's counsel to produce his personnel file.

In the latter instances, despite discussion of a proposed confidentiality order, the latter two still declined to allow defendant's counsel to produce their personnel files.

In light of M.G.L. c. 149, §52, and c. 214, §1B, defendant's counsel was and is reluctant to release an individual's personnel file without the individual's specific authorization, or a court order which protects their privacy. The foregoing will be addressed in the defendant's Memorandum.

Next, defendant's counsel acknowledges that plaintiff's counsel and he spoke but were unable to resolve this matter for the reasons listed in said Motion and set forth herein. Therefore, sanctions are inappropriate, in the opinion of defense counsel, who was and is acting in good faith as to privacy.

Next, defendant's document production including automatic disclosure, which is ongoing, has been extensive. The defendant has produced a related Advisory Committee file, the plaintiff's personnel file, and sections from the defendant's "Personnel Manual" and job descriptions. The defendant, after an IT person researched e-mails, is in the process of producing over 1,000 pages of documents. The vast majority of same appear

unrelated to the plaintiff's complaint. The defendant has agreed to produce MCAD and civil complaints from January 1, 2000 to the present.

As to the other discovery requests, these requests were not the subject of a Local Rule 7.1(A)(2) Conference, and can probably be resolved by counsel without the Court's intervention, and will be addressed in the defendant's Memorandum of Reasons.

WHEREFORE, the defendant requests that:

- (a) If the Court orders production of the personnel files of Sharon Wolder and Alan Jolly, that said order protect their confidentiality in toto and not as set forth in the proposed confidentiality order;
- (b) Deny plaintiff's Motion as to the other requests and responses as not being in compliance with the Local Rules and/or moot; and
- (c) Deny plaintiff's Request for Sanctions.

THE DEFENDANT,  
City of Brockton  
By Its Attorney,

DATED: October 17, 2005

  
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Frank A. Smith, III – BBO #467500  
FRANK A. SMITH, III & ASSOCIATES, P.C.  
11 Beacon Street, Suite 1200  
Boston, MA 02108  
(617) 723-3273

**CERTIFICATE OF SERVICE**

I, Frank A. Smith, III, Attorney for the defendant, City of Brockton School Department, hereby certify that I have this day, October 17, 2005, served a copy of the within DEFENDANT'S OPPOSITION TO PLAINTIFF'S RULE 37 MOTION TO COMPEL PRODUCTION OF DOCUMENTS AND FOR SANCTIONS, and CITY OF BROCKTON'S MEMORANDUM OF REASONS IN SUPPORT OF ITS OPPOSITION TO PLAINTIFF'S RULE 37 MOTION TO COMPEL PRODUCTION OF DOCUMENTS AND FOR SANCTIONS, by delivering same, to:

Kevin G. Powers, Esquire  
Rodgers, Powers & Schwartz LLP  
18 Tremont Street  
Boston, MA 02108  
ATTORNEY FOR PLAINTIFF

  
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Frank A. Smith, III